



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

JAN 23 2015

CERTIFIED MAIL 7010 1060 0002 1705 4389  
RETURN RECEIPT REQUESTED

Mr. James Hopkins  
Manager, City Water Department  
City of Elkhorn City  
395 South Patty Loveless Drive  
Elkhorn City, Kentucky 41522

Re: Information Request – Section 308 of the Clean Water Act  
Administrative Order on Consent No.: CWA-04-2013-4767  
City of Elkhorn City, Kentucky Wastewater Treatment Plant  
National Pollutant Discharge Elimination System Permit No.: KY0020958

Dear Mr. Hopkins:

The U.S. Environmental Protection Agency and the City of Elkhorn City (City) entered into an Administrative Order on Consent (AOC), Docket No.: CWA-04-2013-4767, which obligates the City to perform certain monitoring and reporting requirements related to the wastewater treatment plant (WWTP) noted above. The AOC was effective on September 27, 2013, and is attached to this letter as Enclosure A. Since the effective date, the City has not provided any reports to the EPA pursuant to Paragraph 12 of the AOC. However, the City reported to the Kentucky Department of Environmental Protection that the WWTP was bypassing treatment on September 30, 2013, and August 18, 2014, which are events that may have triggered the monitoring and reporting requirements under Paragraph 12 of the AOC. Pursuant to Section 308 of the Clean Water Act (CWA), 33 U.S.C. § 1318, the EPA hereby requests that the City provide the following information regarding the WWTP noted above:

1. Please provide information regarding the nature and duration of the bypass events referenced above;
2. State whether the aerators were turned off during these bypass events; and
3. State whether any additional bypass events have occurred from September 27, 2013, to the present during which the aerators were turned off.

The City is required to respond to this information request within 30 days of its receipt of this letter. The response should be directed to:

U.S. Environmental Protection Agency, Region 4  
NPDES Permits and Enforcement Branch  
Attn: Ms. Laurie Jones  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

The City's response to this information request should specifically reference the particular section and number of the request and should be organized for the purpose of clarity. In addition, all information submitted must be accompanied by the following certification signed by a responsible City official in accordance with 40 C.F.R. § 122.22:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Failure to comply with this information request may result in enforcement proceedings under Section 309 of the CWA, 33 U.S.C. § 1319, which could result in the judicial imposition of civil or criminal penalties or the administrative imposition of civil penalties. In addition, there is potential criminal liability for the falsification of any response to the requested information.

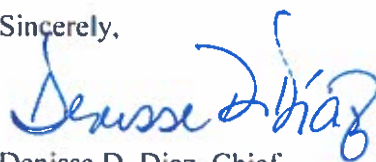
The City shall preserve until further notice all records (either written or electronic) which exist at the time of receipt of this letter that relate to any of the matters set forth in this letter. The term "records" shall be interpreted in the broadest sense to include information of every sort. The response to this information request shall include assurance that these record protection provisions were put in place, as required. No such records shall be disposed of until written authorization is received from the Chief of the NPDES Permitting & Enforcement Branch at the U.S. EPA, Region 4.

If you believe that any of the requested information constitutes confidential business information, you may assert a confidentiality claim with respect to such information except for effluent data. Further details, including how to make a business confidentiality claim, are found in Enclosure B.

Also enclosed is a document entitled *U.S. EPA Small Business Resources-Information Sheet*, which may assist you in understanding the compliance assistance resources and tools available. However, any decision to seek compliance assistance at this time does not relieve the City of its obligations to EPA or the Commonwealth of Kentucky, does not create any new rights or defenses and will not affect EPA's decision to pursue enforcement action.

If you have questions regarding this information request, please contact Ms. Laurie Jones at (404) 562-9201.

Sincerely,



Denisse D. Diaz, Chief  
NPDES Permitting & Enforcement Branch  
Water Protection Division

Enclosures

cc: Mr. Jeff Cummins  
Kentucky Department of Environmental Protection

**ENCLOSURE A**  
**EPA AOC**





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

SEP 27 2013

CERTIFIED MAIL 7012 1010 0001 8097 1983  
RETURN RECEIPT REQUESTED

Jeff Cummins, Director  
Division of Enforcement  
Kentucky Department of Environmental Protection  
300 Fair Oaks Lane  
Frankfort, Kentucky 40601

Re: Administrative Order on Consent CWA-04-2013-4767  
City of Elkhorn City, Kentucky Wastewater Treatment Plant  
National Pollutant Discharge Elimination System Permit No.: KY0020958

Dear Mr. Cummins:

Pursuant to Section 308 of the Clean Water Act (CWA), 33 U.S.C. § 1318, I have determined that it is appropriate to issue an Administrative Order on Consent (AOC) to the above referenced facility, a copy of which is enclosed for your reference. This AOC is being issued in order for the EPA to gather information necessary to determine if the lack of aeration treatment during heavy rain events is potentially causing violations of the National Pollutant Discharge Elimination System Permit. The AOC is presently being served.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Giattina".

James D. Giattina  
Director  
Water Protection Division

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

SEP 27 2013

CERTIFIED MAIL 7012 1010 0001 8097 1488

RETURN RECEIPT REQUESTED

Mr. James Hopkins  
Manager, City Water Department  
City of Elkhorn City  
395 South Patty Loveless Drive  
Elkhorn City, Kentucky 41522

Re: Administrative Order on Consent CWA-04-2013-4767  
City of Elkhorn City, Kentucky Wastewater Treatment Plant  
National Pollutant Discharge Elimination System Permit No.: KY0020958

Dear Mr. Hopkins:

Enclosed, please find the executed copy of the above-referenced Administrative Order on Consent (AOC) Docket No. CWA-04-2013-4767. This AOC is being issued under the authority of Section 308 of the Clean Water Act (CWA), 33 U.S.C. § 1318. This AOC is being issued in order for the EPA to gather information necessary to determine if the lack of aeration treatment during heavy rain events is potentially causing violations of the National Pollutant Discharge Elimination System (NPDES) Permit.

This AOC does not replace, modify or eliminate any other requirements of the CWA or NPDES permit. Notwithstanding the issuance of this AOC, the EPA retains the right to bring enforcement action under Sections 309(d) or 309(g) of the CWA, 33 U.S.C. §§ 1319(d) or 1319(g), for any violation of the CWA.

If you or your client has any comments or questions regarding this matter, please contact Mr. Matthew Hicks, Associate Regional Counsel at (404) 562-9670 or contact Ms. Laurie Jones, Enforcement Officer, at (404) 562-9201.

Sincerely,

Denisse D. Diaz, Chief  
Clean Water Enforcement Branch  
Water Protection Division

Enclosure

cc: Mr. Jeff Cummins  
Director, Kentucky Department of Environmental Protection

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

**IN THE MATTER OF:**

**THE CITY OF ELKHORN CITY  
KENTUCKY**

**PROCEEDING UNDER SECTION  
308 OF THE CLEAN WATER ACT,  
33 U.S.C. § 1318  
NPDES PERMIT NO. KY0020958**

) **ADMINISTRATIVE ORDER**  
) **ON CONSENT**  
)  
) **DOCKET No. CWA-04-2013-4767**  
)  
)  
)  
)  
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)

**ADMINISTRATIVE ORDER ON CONSENT**

**I. STATUTORY AUTHORITY**

1. Section 308 of the Clean Water Act (CWA), 33 U.S.C. § 1318, provides that the U.S. Environmental Protection Agency (EPA), in order to determine “whether any person is in violation of any [] effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance;...” may “require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as [it] may reasonably require.”

2. The following EPA Findings of Fact are made and Order on Consent is issued pursuant to the authority vested in the EPA by Section 308 of the CWA, 33 U.S.C. § 1318, as amended. This authority has been delegated to the Regional Administrator of the EPA, Region 4, and further delegated by the Regional Administrator to the Director of the Water Protection Division, EPA, Region 4.

3. Terms used in this Order on Consent that are defined in the CWA or in regulations promulgated pursuant to the CWA shall have the meanings assigned to them in the CWA, 33 U.S.C. §§ 1251 *et seq.*, and regulations promulgated under the CWA.

**II. EPA FINDINGS OF FACT**

4. To accomplish the objective of the CWA, as defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of the nation’s waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the point source discharge of pollutants into navigable waters except as in compliance with a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

5. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the NPDES permit program authorizing the EPA or authorized states to administer the NPDES permit program, including the issuance of NPDES permits allowing for the discharge of pollutants into navigable waters subject to specific terms and conditions. The EPA has granted the Commonwealth of Kentucky, through the Kentucky Department of Environmental Protection (KDEP), authorization to issue NPDES permits pursuant to Section 402(b) of the CWA.

6. The City of Elkhorn City (the City) is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and is thus subject to its requirements.

7. The City owns and operates a Wastewater Treatment Plant (WWTP) located at John Moore Branch Road, Elkhorn City, Kentucky, which operates under NPDES Permit Number KY0020958. The WWTP discharges "pollutants" as a point source into the Russell Fork of Levisa Fork via Outfall 001.

8. The KDEP issued NPDES Permit No. KY0020958 (the "Permit"), to the City for the WWTP with the effective date of November 13, 2012, and the expiration date of December 31, 2017.

9. On June 12, 2012, the EPA sent a Letter of Concern (LOC) to the City following an inspection conducted by the EPA on September 20, 2011. The purpose of the inspection was to evaluate the City's compliance with its Permit and the CWA. The City was required to respond within 30 days of receipt of the letter.

10. On July 30, 2012, the EPA received the City's reply to the LOC. The EPA found the response to be incomplete and supplemental information was requested by the EPA. Such information was submitted by the City on February 4, 2013, and April 29, 2013.

11. In their April 29, 2013 response letter, the City stated that in instances when WWTP influent flow "gets above 250 gallons per minute we turn aeration off and give time for solids to drop out while still treating with chlorine and declor and before it goes out of plant to the river. This only happens when we have flood type rain storms in a short amount of time."

### **III. ORDER ON CONSENT**

Based on the foregoing EPA FINDINGS OF FACT and pursuant to the authority of Section 308 of the CWA, (33 U.S.C. § 1318), **IT IS HEREBY ORDERED AND AGREED TO** that the City comply with the following requirements:

12. In order for the EPA to determine if the lack of aeration treatment during heavy rain events is potentially causing violations of the NPDES Permit, the EPA hereby requires that the City collect and provide to the EPA the following information:



a. After the City turns off its aerators as a result of increased WWTP influent flow due to rain events, the City shall collect a grab sample of the WWTP effluent 2.75 hours (2 hours and 45 minutes) after the aerators are turned back on. The sample shall be analyzed for Biochemical Oxygen Demands, Total Suspended Solids, Ammonia (as  $\text{NH}_3\text{N}$ ), E. Coli, Dissolved Oxygen, pH, and Total Residual Chlorine. Such sampling shall be conducted according to appropriate test procedures approved under 40 C.F.R. Part 136. Such sampling shall occur for each of the first six instances when the City's aerators are turned off as a result of increased WWTP influent flow due to rain events, following the effective date of this Order on Consent.

b. The City shall provide the date and time the aerators are turned off and turned back on for events subject to Paragraph 12.a. above.

c. For the events sampled pursuant Paragraph 12.a. above, the City shall monitor WWTP influent and effluent flow on a continuous basis, as required by the Permit, during the period of time the aerators are turned off. The City shall report both the hourly maximum flow and hourly average flow for each hour or part thereof that the aerators are off.

13. The information required by Paragraph 12 shall be submitted to EPA within 30 days of the date the samples are collected.

14. Collection of the information required by Paragraph 12 does not relieve the City of its obligation to comply with all applicable provisions of the Permit, including all monitoring requirements contained therein.

#### **IV. DOCUMENTATION AND REPORT SUBMITTAL**

15. All reports, notifications, documentation, and submittals required by this Order on Consent shall be signed by a duly authorized representative of the City as specified by 40 C.F.R. §§ 122.22(b)(2) and (d) and shall include the following statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

16. All documentation, reports, notifications, submittals and other correspondence required to be submitted by this Order on Consent shall be sent by registered mail, certified mail (return receipt requested), or deposited with an overnight mail service, to the following addressees, as appropriate:

Denisse D. Diaz, Chief  
Clean Water Enforcement Branch  
Water Protection Division  
ATTN: Ms. Laurie Jones  
U.S. EPA, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

17. Notifications to, or communications with, the EPA by the City shall be deemed submitted on the date they are postmarked and sent by registered mail, certified mail (return receipt requested), or deposited with an overnight mail/delivery service. Notifications to, or communications with, the City by the EPA shall be deemed received three (3) days after the date they are postmarked and sent by registered mail, certified mail (return receipt requested), or deposited with an overnight mail/delivery service.

18. When circumstances are occurring, or have occurred, which may delay the completion of any requirement of this Order on Consent, whether or not arising from causes beyond the control of the City, including, but not limited to its consultants and contractors, despite the City's best efforts to fulfill the requirement, the City shall so notify the EPA, in writing, within fifteen (15) days after the City learns, or in the exercise of reasonable diligence under the circumstances should have learned, of the delay or anticipated delay. If the EPA finds that a delay in performance is or was from causes beyond the control of the City, the EPA may extend the time for performance, in writing, for a period to compensate for the delay resulting from such causes.

#### **V. FINAL REPORT AND TERMINATION OF THIS ORDER ON CONSENT**

19. Upon EPA's receipt of the sixth and final monitoring report as described in Paragraphs 12 and 13, this Order on Consent shall be terminated.

#### **VI. GENERAL PROVISIONS**

20. Respondent's compliance with this Order on Consent does not necessarily constitute compliance with the provisions of the CWA, 33 U.S.C. § 1251 et seq., or with the Respondent's NPDES permit. Respondent shall remain solely responsible for compliance with the terms of the CWA and this Order on Consent and its NPDES permit.

21. Failure to comply with the requirements herein shall constitute a violation of this Order on Consent and the CWA, and may result in enforcement proceedings under Section 309 of the CWA, 33 U.S.C. § 1319, which could result in the judicial imposition of civil or criminal penalties or the administrative imposition of civil penalties. In addition, there is potential criminal liability for the falsification of any response to the requested information.

22. This Order on Consent shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any other federal, state or local permit. Compliance with this Order on Consent shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA.

23. Issuance of this Order on Consent shall not be deemed an election by EPA to forego any remedies available to it under law, including without limitation, any administrative, civil, or criminal action to seek penalties, fines, or other appropriate relief (including injunctive relief) under the CWA or any other federal or state statute, regulation or permit. EPA reserves all rights and remedies, legal and equitable, available to enforce this Order on Consent.

24. This Order on Consent applies to and is binding upon Respondent and its officers, directors, employees, agents, successors and assigns.

25. Any change in the legal status of Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter Respondent's responsibilities under this Order on Consent.


26. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including, but not limited to, any right of judicial review of this Order on Consent under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

27. EPA has sent a copy of this Order on Consent to the Commonwealth of Kentucky.

#### **EFFECTIVE DATE**


28. This Order on Consent shall become effective upon receipt by the City of a fully executed Order on Consent.

**FOR THE CITY OF ELKHORN CITY**

  
James Hopkins, Manager  
City Water Department  
City of Elkhorn City

9-20-13  
Date

**FOR THE U.S. ENVIRONMENTAL  
PROTECTION AGENCY**

  
James D. Giattina  
Director  
Water Protection Division

9/27/13  
Date



## **ENCLOSURE B**

### **RIGHT TO ASSERT BUSINESS CONFIDENTIALITY CLAIMS**

**(40 C.F.R. Part 2)**

Except for effluent data, you may, if you desire, assert a business confidentiality claim as to any or all of the information that EPA is requesting from you. The EPA regulation relating to business confidentiality claims is found at 40 C.F.R. Part 2.

If you assert such a claim for the requested information, EPA will only disclose the information to the extent and under the procedures set out in the cited regulations. If no business confidentiality claim accompanies the information, EPA may make the information available to the public without any further notice to you.

40 C.F.R. §2.203(b). **Method and time of asserting business confidentiality claim.** A business which is submitting information to EPA may assert a business confidentiality claim covering the information by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential." Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by the business, and may be submitted separately to facilitate identification and handling by EPA. If the business desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state.

